

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ERIK MCDONALD, JR.,

Plaintiff,

-vs-

Case No. 15-CV-1290

CAPTAIN WOGSLAND ADAMS, et al.,

Defendants.

ORDER

The plaintiff, who is proceeding *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 along with a petition to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. On December 16, 2015, the plaintiff was ordered to forward to the Clerk of Court by January 15, 2016, the sum of \$1.73 as an initial partial filing fee in this action. The plaintiff was advised that, upon payment of this fee, the court would determine whether the action can proceed *in forma pauperis*. To date the plaintiff has not paid this partial filing fee. From this failure to pay the initial filing fee the Court infers that the plaintiff no longer wants to prosecute this action.

However, before dismissing this case for failure to pay the initial fee, the Court must determine whether the prisoner is at fault for the non-payment. See *Thomas v. Butts*, 745 F.3d 309, 312-13 (7th Cir. 2014). A court may not dismiss the suit of a prisoner who has a lack of funds in his

account. *Id.* at 312; see also § 1915(b)(4) (“In no event shall a prisoner be prohibited from bringing a civil action . . . for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.”). “But if the court finds that the prisoner is unable to pay the partial filing fee at the time of collection because he intentionally depleted his account to avoid payment, the court in its sound discretion may dismiss the action.” *Thomas*, 745 F.3d at 312 (citations and quotations omitted).

IT IS ORDERED that the plaintiff shall show cause why this case should not be dismissed for nonpayment of the initial partial filing fee.

IT IS FURTHER ORDERED that on or before **February 17, 2016**, the plaintiff shall either pay the initial partial filing fee or provide the Court with information about why he has not paid the fee.

IT IS ALSO ORDERED that a copy of this order be sent to the warden of Columbia Correctional Institution.

Dated at Milwaukee, Wisconsin, this 29th day of January, 2016.

BY THE COURT:


HON. RUDOLPH T. RANDA
U.S. District Judge